

# Indian Constitution



Sub Code : 3130007

- AS PER NEW SYLLABUS OF GUJARAT TECHNOLOGICAL UNIVERSITY
- SEM III (COMMON TO ALL BRANCHES)
- SIMPLIFIED APPROACH
- SHORT ANSWERED QUESTIONS
- MULTIPLE CHOICE QUESTIONS WITH ANSWERS



**TECHNICAL  
PUBLICATIONS**

*An Up-Thrust for Knowledge*

**V. S. Bagad**

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# 1

## Meaning of Constitution Law and Constitutionalism

### *Syllabus*

*Meaning of the constitution law and constitutionalism.*

### *Contents*

- 1.1 *Constitutional Law*
- 1.2 *Constitutionalism*
- 1.3 *Short Answered Questions*
- 1.4 *Multiple Choice Questions*

## 1.1 Constitutional Law

- Constitutional law concerns the relationship between the individual and the state, seen from a particular view front, namely the notion of law.
- The rules of constitutional law govern political relations within a given society, reflecting a particular distribution of political power.
- In a stable society, constitutional law expresses what may be a very high degree of consensus about the organs and procedures by which political decisions are taken by recourse to armed force, gang warfare, or the might of terrorist violence, the rules of constitutional law are either non-existent or at best, no more than a transparent cover for a power struggle that is not conducted in accordance with anything deserving the name of law.
- Within a stable democracy, constitutional law reflects the value that people attach to orderly human relations, to individual freedom under the law and to institutions such as Parliament, political parties, free elections and a free press.
- Meaning of Constitution
- Constitution means a document having a special legal status which sets out the framework and principal functions of the organs of government within the state and declares the principles or rules by which those organs must operate.
- In modern words, constitution refers to the whole system of government of a country, the collection of rules which establish and regulate or govern the government.
- This system is founded partly on Acts of Parliament and Judicial decisions, partly upon political practice and partly upon detailed procedures established by the various organs of government for carrying out their own tasks, e.g. the law and custom of Parliament or the rules issued by the Prime Minister to regulate the conduct of Ministers.
- The constitution provides the foundation of the government, structuring the political organization and guaranteeing individual and collective rights and freedoms.
- Constitution has also been defined as :
  - a) Basic norm (or law) of the state;
  - b) System of integration and organization of norms and laws; and
  - c) Organization of the government.



## 1.2 Constitutionalism

- Constitutionalism form the core of good government in the modern democratic world to check on the powers of the different organs of government and the protection of liberty and fundamental rights of individuals within that sovereign territory.
- All efforts are made by the developed and the developing countries in upholding the rule of law, which are guaranteed through the constitution, to promote democracy for a just and fair society.
- Constitutionalism is a system of governance in which the power of the government is limited by laws, checks and balances, in order to reconcile authority with individual and collective freedoms.
- Constitutionalism is based on the principles outlined in the constitution - or in other core legal document.
- The principle of constitutionalism must be understood in opposition to non-constitutionalism - a system in which the government uses its powers in an arbitrary fashion, without respecting the citizens' rights.
- Constitutionalism is a principle and a system of governance that respects the rule of law and limits the power of the government.
- The idea of constitutionalism (and of constitution) is strictly linked with the progress and spread of democracies.

## 1.3 Short Answered Questions

**Q.1** What is a constitution ? State its application.

**Ans. :** Constitution is -

- Constitution is set of rules that prescribe the structure and functions of a government in a specified territory.
- They are used to :
  1. Lay down institutional forms through which power is exercise
  2. Allocate power (horizontally across branches and vertical through local government through to EU)
  3. Impose constraints on government and establish where power starts and ends
  4. Give legitimacy to a government, particularly considering the power they exercise over us.
  5. Anticipate events and make provisions for the protocol in those events.

# 2

## Historical Perspective of Constitution of India

### ***Syllabus***

*Historical perspective of the Constitution of India.*

### ***Contents***

- 2.1 *History of Constitution in India*
- 2.2 *Indian Constitution*
- 2.3 *Elements of Constitution of India*
- 2.4 *Multiple Choice Questions*

## 2.1 History of Constitution in India

- Before 1947, India was divided into two main entities - The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union.
- The timeline of History of Constitution of India is expressed here -

### 1. Regulating Act of 1773

- The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the **Governor** of Bengal (Fort William) as the **Governor-General (of Bengal)**.
- Warren Hastings became the first Governor-General of Bengal.

### 2. Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Governor's councils were established in Madras and Bombay.

### 3. Charter Act of 1813

- The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

### 4. Charter Act of 1833

- Laws made before Charter Act of 1833 were called **Regulations** and those made after are called **Acts**.
- **Governor-General (of Bengal)** became as the Governor-General of India.
- First Governor-General of India was Lord William Bentick.
- This was the final step towards centralization in the British India.
- Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.
- The Act ended the activities of the East India Company as a commercial body and it became a purely administrative body.

### 5. Charter Act of 1853

- **The legislative and executive functions of the Governor-General's Council were separated.**
- 6 members in Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.

- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all)

#### 6. Government of India Act of 1858

- The rule of Company was replaced by the Secretary of State for India, assisted by the **Council of India**, having 15 members.
- The Governor-General was made the Viceroy of India. Lord Canning was the first Viceroy of India.

#### 7. Indian Councils Act of 1861

- It introduced for the first time Indian representation in the institutions like Viceroy's executive+legislative council (non-official). 3 Indians entered Legislative council.
- Legislative councils were established in Center and provinces.

#### 8. India Council Act of 1892

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.
- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

#### 9. Indian Councils Act of 1909

- This Act is also known as the Morley- Minto Reforms. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
- **Indians for the first time in Viceroy's executive council.** (Satyendra Prasad Sinha, as the law member)

#### 10. Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects

#### 11. Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units.

#### 12. Indian Independence Act of 1947

- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.

## 2.2 Indian Constitution

- The Constitution of Independent India was framed in the background of about 200 years of colonial rule, mass-based freedom struggle, and the national movement, partition of the country and spread of communal violence.
- Therefore, the framers of the Constitution were concerned about the aspirations of the people, integrity and unity of the country and establishment of a democratic society. Their main aim was to give India a 'Constitution' which will fulfil the cherished ideas and ideals of the people of this country.
- It was adopted by the Constitution Assembly. Dr. B. R. Ambedkar, the chairman of the Drafting Committee, is widely considered to be the architect of the Constitution of India. After, the adoption of the constitution, The Union of India became the contemporary and modern Republic of India
- Our constitution was framed over a period of 2 years, 11 months and 18 days. The framing of the Constitution was completed on November 26, 1949 when the Constituent Assembly formally adopted the new Constitution. The Constitution came into force with effect from January 26, 1950. 26th of January is celebrated as the Republic Day of India.
- The Constitution contains the fundamental law of the land. It is the source of all powers of, and limitations on, the three organs of State, viz. the executive, legislature and judiciary.
- No action of the state would be valid unless it is permissible under the Constitution. Therefore, it is imperative to have a clear understanding of the nature and working of the Constitution.
- The Constitution begins with a Preamble which declares India to be a Sovereign, Socialist, Secular, Democratic, Republic.
- The Preamble also mentions the goals of securing justice, liberty and equality for all its citizens and promotion of national unity and integrity on the basis of fraternity among the people assuring dignity of the individual.

## 2.3 Elements of Constitution of India

- The Constitution of India is the supreme law of India. It is a living document, an instrument which makes the government system work. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens.
- It is the longest written constitution of any sovereign country in the world, containing 450 articles in 25 parts, 12 schedules, 5 appendices and 101 Amendments.

- Different elements of constitution are described as follows :
  1. **Preamble (1)** - The Preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.
  2. **Parts (25)** - The individual Articles of the Constitution are grouped together into the following Parts :
    1. Part I – Union and its Territory
    2. Part II – Citizenship.
    3. Part III – Fundamental Rights.
    4. Part IV – Directive Principles of State Policy.
    5. Part IVA – Fundamental Duties.
    6. Part V – The Union.
    7. Part VI – The States.
    8. Part VII – States in the B part of the First schedule (Repealed).
    9. Part VIII – The Union Territories
    10. Part IX – The Panchayats.
    11. Part IXA – The Municipalities.
    12. Part X – The scheduled and Tribal Areas
    13. Part XI – Relations between the Union and the States.
    14. Part XII – Finance, Property, Contracts and Suits
    15. Part XIII – Trade and Commerce within the territory of India
    16. Part XIV – Services Under the Union, the States.
    17. Part XIVA – Tribunals.
    18. Part XV – Elections
    19. Part XVI – Special Provisions Relating to certain Classes.
    20. Part XVII – Languages
    21. Part XVIII – Emergency Provisions
    22. Part XIX – Miscellaneous
    23. Part XX – Amendment of the Constitution
    24. Part XXI – Temporary, Transitional and Special Provisions
    25. Part XXII – Short title, date of commencement, Authoritative text in Hindi and Repeals
  3. **Article (1-450)** - It is subcategory of different Parts in the constitution which contains detail information of the subject or the Title which an Article represents.

4. **Amendments (101)** - Amendment of the Constitution of India is the process of making changes to the nation's fundamental law. Changes to the Indian constitution are made by the federal parliament. The procedure is laid out in Part XX, Article 368, of the Constitution.
5. **Schedules (12)** - Schedules are lists in the Constitution that categorize and tabulate bureaucratic activity and policy of the Government.
6. **Appendices (5)** - They are extension to the constitution.
7. **Fundamentals Rights (Part III- Article 12-35)** - The word fundamental suggests that these rights are so important that the Constitution has separately listed them and made special provisions for their protection. The Fundamental Rights are so important that the Constitution itself ensures that they are not violated by the government.
8. **Fundamental Duties (Part IV Article 51A)** - These Fundamental rights have been provided at the cost of some fundamental duties. These are considered as the duties that must be and should be performed by every citizen of India.
  - These fundamental duties are defined as : It shall be the duty of every citizens of India :
    - a. To abide by the constitution.
    - b. To uphold and protect the sovereignty, unity and integrity of India.
    - c. To cherish and follow the noble ideas which inspired our national struggle for freedom
    - d. To defend the country and render national service when called upon to do so.
    - e. To promote harmony and the spirit of common brotherhood.
    - f. To value and preserve the rich heritage of our composite culture.
    - g. To protect and improve the national environment.
    - h. To develop the scientific temper, humanism and the spirit of inquiry and reform.
    - i. To safeguard public property and to abjure violence.
    - j. To strive towards excellence in all spheres of individual and collective activity, so that the nations constantly rises to higher levels of endeavor and achievement.
9. **Directive Principles (Part IV- Article 36-51)** - It provides the social and economic base of a genuine democracy. The classifications of these are as follows -
  1. Socio-economic principles
  2. Liberal principles
  3. Gandhian principles
  4. International principles

# 3

## **Salient Features and Characteristics of Constitution of India**

### ***Syllabus***

*Salient features and characteristics of the Constitution of India.*

### ***Contents***

- 3.1 *Features/Characteristics of Constitution of India*
- 3.2 *Multiple Choice Questions*



### 3.1 Features/Characteristics of Constitution of India

- Following are the key features of Indian constitution :

#### 1. A Written and Bulky Document

- Indian Constitution is a written document of voluminous size. It is perhaps the lengthiest written constitution in the world and is described as "The bulkiest in the world,".
- It is a document of 251 pages and contains 395 Articles, in 22 chapters and 9 Schedules. One reason for its bulkiness is that, unlike, the US constitution it describes the governmental machinery of the component states.

#### 2. Federal Policy

- The Constitution of India does not use the term 'federal state'. It says that India is a 'Union of States'.
- There is a distribution of powers between the Union/Central Government and the State Governments. Since India is a federation, such distribution of functions becomes necessary.
- There are three lists of powers such as Union List, State List and the Concurrent List.
- It has set up a Supreme Court to adjudicate in the disputes between the two sets of government over matters of jurisdiction and authority.
- But it has armed the Central Government with so many powers in emergencies and even in normal times that the constitution has virtually become a unitary state.
- The result is that is rightly said, the constitution is more unitary than federal, really it is a quasi-Federal-constitution.

#### 3. Parliamentary System of Government

- India has a parliamentary form of democracy. This has been adopted from the British system.
- The Indian Constitution is patterned on the Parliamentary model of government both at the Centre and in the States.
- The President of India is a constitutional ruler like the Queen of England and acts on the advice of the Prime Minister and the cabinet, which are responsible to the Lok Sabha the lower chamber of the Indian Parliament.
- In a parliamentary democracy there is a close relationship between the legislature and the executive. The Cabinet is selected from among the members of legislature.
- The cabinet is responsible to the latter. In fact the Cabinet holds office so long as it enjoys the confidence of the legislature. In this form of democracy, the Head of the State is nominal.

- In India, the President is the Head of the state. Constitutionally the President enjoys numerous powers but in practice the Council of Ministers headed by the Prime Minister, which really exercises these powers. The President acts on the advice of the Prime Minister and the Council of Ministers.

#### 4. Fundamental Rights

- Fundamental Rights are one of the important features of the Indian Constitution. There is long and impressive list of Fundamental Rights in Indian constitution. They are the very essence of a democratic form of government.
- The Fundamental Rights are grouped into following categories which include -
  - 1) equality before law,
  - 2) equality of opportunity of public employment,
  - 3) no distinction of titles and academics and
  - 4) no discrimination on the basis of religion, race, caste and sex,
  - 5) freedom of religion, cultural and educational rights,
  - 6) rights to property,
  - 7) right to constitutional remedies,
  - 8) right against exploitation and forced labour etc.
- But all these rights are not absolute. They can be curtailed or even suspended by the state whenever the state considers it necessary.
- Fundamental Rights are justiciable and are protected by the judiciary. In case of violation of any of these rights one can move to the court of law for their protection.
- Fundamental Duties were added to our Constitution by the 42<sup>nd</sup> Amendment. It lays down a list of ten Fundamental Duties for all citizens of India. While the rights are given as guarantees to the people, the duties are obligations which every citizen is expected to perform.

#### 5. Directive Principles of State Policy

- The Directive Principles of State Policy which have been adopted from the Irish Constitution is another unique feature of the Constitution of India.
- The Directive Principles were included in our Constitution in order to provide social and economic justice to our people. Directive Principles aim at establishing a welfare state in India where there will be no concentration of wealth in the hands of a few.

## 6. Not a Very Rigid Constitution

- The Constitution is a unique combination of rigidity and flexibility. The process of amendment has been deliberately kept rather complicated.
- In some matters, it can be easily amended by  $2/3^{\text{rd}}$  majority of members present and voting in each chamber of Parliament and such an amendment must further be ratified by the legislatures not less than one half of the states.
- Moreover, in special circumstances and in the national interest, this former amendment procedure can be bypassed temporarily by a resolution of Rajya Sabha, adopted by a  $2/3^{\text{rd}}$  majority of members present and voting. Further, in times of emergency the President can suspend the autonomous powers of the states. Thus the constitution is in parts highly flexible and in other parts very rigid.

## 7. Independent Judiciary

- The Supreme Court of India can declare null and void any executive orders and ordinances if they are found inconsistent with specific provision(s) of the constitution.
- The Supreme Court has extensive original as well as appellate jurisdiction along with judicial review.
- The Parliament extends the court jurisdiction, but may also limit it, the Court's "authority is intended to be more a barrier to executive arbitrariness violations of constitution than to legislative acts.
- Any assumption of power by the court to frustrate the social policies decided upon by the legislature can be prevented in the last resort by an amendment of the constitution of India. It is refined blending of judicial supremacy and parliamentary sovereignty.
- It avoids the extra-super authority of the Supreme Court through which the Court can invalidate the Acts of Parliament and give the Parliament its due place.
- The Parliament is sovereign in the sphere of legislation within the bounds of the constitution.

## 8. Single Citizenship

- Although India is a federal state, yet the constitution of India provides for the single citizenship unlike the American constitution.
- All Indian citizens enjoy single citizenship irrespective of their domicile or state of residence. It means that every Indian is a citizen of India, irrespective of the place of his/her residence or place of birth. He/she is not a citizen of the Constituent State like Jharkhand, Uttaranchal or Chattisgarh to which he/she may belong to but remains a citizen of India.
- They enjoy equal rights and perform equal obligations. This element is provided in the

constitution to foster strong bond of social and political unity among the people of India, who are divided on account of racial discrimination, variety of languages and multiplicity of religious and cultural background.

### 9. Sovereign Democratic Republic

- Another noticeable feature of Indian constitution is that it is a Sovereign Democratic Republic. It is a republic because it is headed by a President and does not owe allegiance to a king although; it continues to be a member of the Commonwealth of Nations.
- It is sovereign because India is independent both in internal and external- affairs and free to follow any policy.
- India is democratic because the people have the right to elect, control or dismiss a government.

### 10. Secularistic Principles

- The Indian Constitution seeks to make India a secular state. There is no state religion. No religion is given any privilege, nor is any religion discriminated against.
- No religious community can get any preferential treatment in respect of public employment. No religious institution is given in government schools and educational institutions.
- In practice, the Indian government is a fanatical Hindu government devoted to the cause of Hinduism of the whole life and culture of India, which is otherwise a home of several religions and cultures.

### 11. Bicameral Legislature

- It provides for the bicameral legislature. The Parliament is comprised of two Houses Council of States (Rajya Sabha) and The House of People (Lok Sabha).
- The Council of States is represented by states, elected by state legislatures for a period of 6 years.  $\frac{1}{3}^{\text{rd}}$  retiring every after 2 years.
- The House of People is directly elected for a period of 5 years on the basis of direct adult and universal suffrage.
- The powers and privileges of its members and the relations between the two Houses of the Indian Parliament special.

### 12. Official Languages

- The Indian Constitution declares Hindi in the Devanagri script as a national language, while English was to be used as official language for first 15 years i.e. up to 1965. After the enforcement of constitution the President was to take a decision whether English might be replaced by Hindi or the period might be extended further.

- Extension in the period regarding the use of English had been awarded by the President. Each state is authorized to adopt any one or more of regional languages for all or some of the official purposes.

### 13. Universal Adult Franchise

- Indian democracy functions on the basis of 'one person one vote'. Every citizen of India who is 18 years of age or above is entitled to vote in the elections irrespective of caste, sex, race, religion or status.
- The Indian Constitution establishes political equality in India through the method of universal adult franchise.

### 14. Emergency Provisions

- The Constitution makers also fore saw that there could be situations when the government could not be run as in ordinary times. To cope with such situations, the Constitution elaborates on emergency provisions.

Sr. No.	Article	Name of the Emergency	Description
1.	Article 352	National Emergency	Proclaimed on the ground of war or external aggression or armed rebellion.
2.	Article 356	State Emergency	Proclaimed on the ground that constitutional machinery has broken down in a state.
3.	Article 365	State Emergency	Proclaimed on the ground that a particular state has failed to follow the directions of the Centre.
4.	Article 360	Financial Emergency	Proclaimed on the ground that there is threat to the financial stability or Credit of India.

### 15. Synthesis of Parliamentary Sovereignty and Judicial Supremacy

- Indian Constitution envisages for a synthesis of Parliamentary sovereignty and Judicial Supremacy.
- Supreme Court on one hand can declare parliamentary laws as unconstitutional (by judicial review). On the other hand, parliament can amend the major portion of the Constitution (by constitutional Amendment).

# 4

## Scheme of the Fundamental Rights

### *Syllabus*

*Scheme of the fundamental rights.*

### *Contents*

- 4.1 *Introduction*
- 4.2 *Fundamental Rights*
- 4.3 *Features of Fundamental Rights*
- 4.4 *Short Answered Questions*
- 4.5 *Multiple Choice Questions with Answers*

#### 4.1 Introduction

- The Constitution of India is the supreme law of India. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government.
- It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a constituent assembly, and adopted by its people, with a declaration in its preamble. Parliament cannot override it.

#### 4.2 Fundamental Rights

- Fundamental Rights are those Rights which are mentioned under Part III of the Indian Constitution.
- There are certain Rights which are mentioned in the Constitution, but not under Fundamental Rights. Such Rights are called Constitutional Rights. (E.g. Right to Vote)
- There are certain Rights which are available to citizens through laws passed by Legislatures (Centre or State). Such Rights are called Statutory Rights. (E.g. Right to Information)
- The Constitution of India provides its citizens with six fundamental rights.
- These rights are the Right to Freedom, Right to Equality, Cultural and Educational Rights, Right to Constitutional Remedies, Right against Exploitation, Right against Exploitation. Recently, the Right to Privacy has also been added to the fundamental rights.
- Part-III of the Indian constitution from article 12 to 32, contains fundamental rights.

#### Classification of Fundamental Rights

- Originally Constitution provided for seven Fundamental Rights viz.
  1. Right to equality (Article 14-18)
  2. Right to freedom (Article 19-22)
  3. Right against exploitation (Article 23-24)
  4. Right to freedom of religion (Articles 25-28)
  5. Cultural and educational rights (Articles 29-30)
  6. Right to constitutional remedies (Article 32).
- Originally, there were seven Fundamental Rights in the Constitution. Besides the above mentioned six rights, there was the Right to Property also. Since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth, it was removed from the list of Fundamental Rights in 1978 by 44<sup>th</sup> constitutional amendment. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal right and not a Fundamental Right.

### 4.2.1 Right to Equality (Articles 14-18)

#### Article 14 (Equality before law) :

- Article 14 says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- Article 14 is taken from the concept of equal protection of laws has been taken from the Constitution of USA.
- The concept of the rule of law is a negative concept while the concept of equal protection of laws is a positive concept.
- The concept of equality before the law is equivalent to the second element of the concept of the 'rule of law' propounded by A.D. Dicey, the British jurist. But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.

#### Article 15 (Prohibition of discrimination)

- Article 15 (Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth).
- Article 15 says that the state shall not discriminate against only of religion, race, sex, place of birth or any of them.
- Under Article 15 (3) & (4), the government can make special provisions for women and children and for a group of citizens who are economically and socially backward.

Art	Explanation
15 (1)	No discrimination on grounds of religion, race, caste, sex or place of birth can be made. It applied to matters under the control of the state.
15 (2)	Prohibits discrimination at public places (shops public hotels, restaurants, well, tanks, bathing, ghats, etc.) and applies both to state and private individual.
15 (3)	Provisions for protection of women and children.
15 (4)	Provisions to protect interests of backward classes, 1 <sup>st</sup> amendment Act, 1951.

#### Article 16 (Equality of opportunities in matters of public employment) :

- Article 16 says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.



Art	Explanation
16 (1) and (2)	No discrimination in public employment on grounds of religion, race, caste, sex, descent, place of birth or residence.
16 (3)	Residence within a state is a qualification for appointment for any government post.
16 (4)	For reservation of posts in govt. jobs in favour of any backward class.
16 (5)	Provides for the incumbent of any office, in connection with the affairs of any religions or denominational institution or any member of the governing body shall be a person professing a particular religion or belonging to a particular denomination is not a violation of the constitution.

**Article 17 (Abolition of Untouchability) :**

- Article 17 says that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offense punishable by law.

**Article 18 (Abolition of titles) :**

- Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state.
- The awards, Bharat Ratna, Padma Vibhuan, Padma Bhushan and Padma Shri, called as The National Awards would not amount to title within the meaning of Article 18(i).

Art	Explanation
17	Abolition of Untouchability. The parliament has passed protection of civil rights act, 1955 to abolish untouchability.
18	Abolition of Titles except military and academic titles, i.e., Bharat Ratna, Padma Vibushan, Padma Shri and National Awards.

**4.2.2 Right to Freedom (Articles 19-22)**

**Article 19 (Protection of certain rights regarding freedom of speech, etc.) :**

- Article 19 says that all citizens shall have the right
  1. To freedom of speech and expression.
  2. To assemble peacefully and without arms.
  3. To form associations\*or unions.



- To move freely throughout the territory of India.
- To practice any profession or to carry on any occupation, trade or business.

Article 19 provides for 6 fundamental rights in the nature of freedoms. These are guaranteed to Indian citizens with reasonable restrictions.

Freedom		Restrictions imposed	
19 (1) (a)	Speech and Expression	19 (2) 8 Grounds	Integrity and sovereignty of India
	Freedom of Press and Media. People's Right to know		Security of the state
			Friendly relations with foreign states
			Public order
			Decency and morality
			Contempt of court
			Defamation
			Incitement to an offence
19 (1) (b)	Assembly	19 (3) 3 Grounds	Assembly must be peaceful
			Assembly must be unarmed
			Restriction under Art 19 (3) : Sovereignty and integrity of India Public order
19 (1) (c)	Forming Association	19 (4) 3 Grounds	Sovereignty and integrity of India
			Public order
			Morality
19 (1) (d)	Freedom of Movement	19 (5) 2 Grounds	Interest of general public
			Protection of interests of any Scheduled Tribe
19 (1) (e)	Freedom of Residence	19 (5) 2 Grounds	Interest of general public



			Protection of interests of Scheduled Tribe
19 (1) (f)	Freedom of Profession Occupation Trade or Business	19 (6)	By the state making any law relating to : Protecting Public interest.
			Establishing professional/ technical qualifications for a profession / occupation, trade or business.
			Enabling state to conduct any trade or business excluding citizens wholly or partially.

**Article 20 : Protection in respect of conviction for offences**

- Article 20 says that state can impose reasonable restrictions on the groups of security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, etc.
- Article 20 provides 3 safeguards to persons accused of crimes :
  - **Article 20 (1) : Ex-Post facto law** – No person shall be convicted of any offence except for the violation of ‘law in force’. Such protection does not apply in case of Preventive Detention.
  - **Article 20 (2) : Double Jeopardy** – No person shall be prosecuted and punished for the same offence more than once.
  - **Article 20 (3) : Prohibition against Self Incrimination** – No person accused of an offence shall be compelled to be a witness against himself.

**Article 21 : Protection of life and personal liberty**

- Article 21 states that no person shall be deprived of his life and personal liberty except according to the law.

**Article 21A :** States that, that state shall provide free and compulsory education to all children of the age of 6-14 years.

- Article 21 now protects Right to Life and Personal Liberty even from legislative action.
- It includes –
  - a) Right to live with human dignity.
  - b) Right to livelihood.

- c) Right to privacy.
  - d) Right to shelter.
  - e) Right to health and medical assistance.
  - f) Right to free legal aid.
  - g) Right against solitary confinement.
  - h) Available to 'citizens' and 'non-citizens'.
- **Right to Education is a Fundamental Right under Article 21-A** (86<sup>th</sup> Constitutional Amendment 2002).
  - Provision of Compensation if Article 21 is violated.
  - Right to Death is not a fundamental right under Article 21.

#### **Article 22 : Protection against arrest and detention in certain cases**

- Article 22 grants protection to persons who are arrested or detained. Detention is of two types – punitive and preventive.
- **Punitive Detention** is to punish a person for an offence committed by him after trial and conviction in a Court.
- Preventive means detention of a person without trial and conviction by a person for a past offence, but to prevent him from committing an offence in the near future.
- It includes
  - Right to be informed about the ground of arrest.
  - Right to be defended by a lawyer of his own choice.
  - Right to be produced before a magistrate within 24 hours.
  - No detention beyond 24 hrs except by order of the magistrate.
- No law providing for preventive detention shall authorize the detention of a person for a longer period than 3 months unless - an advisory board consisting of persons who are qualified to be appointed as judge of a High Court has reported before the expiration of the said period of 3 month that there is in its opinion sufficient cause for such detention.
- This right is not available to an enemy, an alien and a person arrested and detained under Preventive Detention.

#### **4.2.3 Right Against Exploitation (Article 23 & 24)**

##### **Article 23 and 24 : Right Against Exploitation**

- **Article 23** : Protects individual against actions of the state and private citizens. This right is available to both citizens and non-citizens.

- **Article 23(i)** : Prohibits traffic in human beings and forced labour.
- **Article 23(ii)** : Nothing in this article shall prevent state from imposing compulsory services for public purpose and in imposing such service the state shall not make any discrimination on grounds of religion, race, caste or class or any of them.
- **Article 24** : Prohibits employment of children below 14 years of age in a dangerous occupation, factory and mines.

#### **4.2.4 Right to Freedom of Religion (Articles 25-28)**

##### **Articles 25-28 : Right to Freedom of Religion**

- **Article 25** deals with freedom of conscience and free profession, practice, and propagation of religion.  
**Article 26** deals with freedom to manage religious affairs.  
**Article 27** deals with freedom as to payment of taxes for promotion of any particular religion.  
**Article 28** deals with freedom as to attendance at religious instructions or religious worship in certain educational institutions.

#### **4.2.5 Cultural and Educational Rights (Articles 29-30)**

##### **Articles 29-30 : Cultural and Educational Rights**

- **Article 29** deals with the protection of language, script, and culture of minorities.  
**Article 30** deals with the right of minorities to establish and administer educational institutions.

#### **4.2.6 Right to Constitutional Remedies (Article 32)**

##### **Article 32 : Right to Constitutional Remedies**

- **Article 32** deals with the right to move to the Supreme Court for the enforcement of Fundamental Rights including the Writs of (i) Habeas corpus, (ii) Mandamus, (iii) Prohibition, (iv) Certiorari and (v) Quo warranto.
- It provides for machinery for the effective enforcement of Fundamental Rights.
- It empowers a person to approach the Supreme Court directly for the enforcement of his Fundamental Rights.
- Right to Constitutional Remedies cannot be suspended except otherwise provided in the Constitution, i.e. during Emergency.
- Dr. Ambedkar calls this article "the very soul and heart of the Constitution."

<b>Writs Under Article 32</b>	
<b>Habeas corpus</b> means 'to produce of body of'	Order to the person who has detained another to produce the detainee before the court. This is issued to let the court know the grounds of confinement. This protects individual liberty.  It is a powerful safeguard against arbitrary Acts not only of private individual but also of the Executive.
<b>Mandamus</b> means 'a command'	Commands a public or quasi-public legal person to perform his duty.  The writ of mandamus can be issued by the court to enforce Fundamental Rights : whenever a public officer or a Government has committed an Act violating a person's Fundamental Rights, the court can restrain that authority from enforcing such orders or committing such an act.
<b>Prohibition</b> means 'to forbid'	Issued by Supreme Court or High Court to a lower court forbidding it continue proceedings in a case beyond its jurisdiction or exercise jurisdiction which is not vested with it legally. The Supreme Court can issue the writ only where a Fundamental Right is affected because of jurisdictional defect in their proceedings.
<b>Certiorari</b> means 'to be certified'	Issued to a lower court after a case has been decided by it quashing the decision or order. It ensures that the jurisdiction of an interior court or tribunals is properly exercised.  While prohibition is available during the pendency of the proceedings and before the order is made, certiorari can be issued only after the order has been made under similar circumstances.
<b>Quo Warranto</b> means 'what is your authority'	Issued by the court to enquire into the legality of claim which a person asserts to a public office.  The writ of quo warranto enables the public to see that a public office is not usurped by an unlawful claimant.

#### 4.2.7 Right to Privacy

- Right to privacy is an intrinsic part of Article 21 that protects life and liberty of the citizens.
- The ruling has implications for the government's vast biometric ID scheme, covering access to benefits, bank accounts and payment of taxes.
- Rights groups are concerned personal data could be misused. The authorities want registration to be compulsory.

### 4.3 Features of Fundamental Rights

- Necessary features of Fundamental Rights are as follows :
1. Fundamental Rights are an indispensable part of our Constitution. Twenty-four articles are enjoined with these Fundamental Rights. Parliament can amend Fundamental Rights by a special procedure.
  2. Fundamental Rights are only for Indian citizens. No alien is permitted to enjoy these rights except right to life, liberty and personal property.
  3. Fundamental Rights are not absolute. Therefore within some reasonable restrictions citizens can enjoy them. Fundamental Rights without prescribed conditions may disrupt public order.
  4. Fundamental Rights are suspendable during the time of emergency and rights of the citizen are curtailed temporarily except right to life and personal liberty (article-20-21).
  5. Fundamental Rights are justiciable also. A citizen can go to the court for enforcement of his Fundamental Rights if some one violates them. Under Article 32 and Article 226 of the Indian Constitution, a citizen can approach the Supreme Court and High Court respectively in this regard.
  6. Fundamental Rights are amendable also. Parliament can amend these rights by a special procedure.
  7. Some Fundamental Rights are positive while some others are negative in nature.
  8. Fundamental Rights aim at restoring collective interest along with individual interest.
  9. Fundamental Rights are superior to ordinary law of the land. They are conferred a special sanctity.
  10. Some Fundamental Rights are limited to citizens only, such as freedom of speech, assembly, and cultural and educational rights, but other rights like equality before the law, religious freedom etc are available to both citizens and aliens.
  11. Some provisions of Chapter-III of the Indian Constitution are of the nature of prohibitions and place Constitutional limitations on the authority of the state. For instance, no authority of the state can deny to any person equality before the law or the equal protection of the laws.

#### Review Questions

1. What are the freedoms provided in the Indian Constitution ?
2. Which freedom has been violated in the following cases ?
  - i) The state policy did not allow the leader of a particular political party to cross its border and enter the state without any reason.

# 5

## Fundamental Duties and its Legal Status

### *Syllabus*

*The scheme of the Fundamental Duties and its legal status.*

### *Contents*

- 5.1 *Fundamental Duties*
- 5.2 *Short Answered Questions*



## 5.1 Fundamental Duties

- Some such important duties have been incorporated in the Indian Constitution also. The original Constitution enforced on 26<sup>th</sup> January, 1950 did not mention anything about the duties of the citizen.
- It was expected that the citizens of free India would perform their duties willingly. But things did not go as expected. Therefore, ten Fundamental Duties were added in Part-IV of the Constitution under Article 51-A in the year 1976 through the 42<sup>nd</sup> Constitutional Amendment.
- However, whereas Fundamental Rights are justiciable, the Fundamental Duties are non-justiciable. It means that the violation of fundamental duties, i.e. the non-performance of these duties by citizens is not punishable.

### Article 51A- Fundamental Duties

- Fundamental duties were added to the Indian constitution through 42<sup>nd</sup> Constitutional amendment act in 1976 based on the recommendations of the Swaran Singh committee.
  - This amendment added a new part to the constitution (Part-IV A which deals with fundamental duties). This new part consists of only one Article, that is, Article 51A.
  - The following ten duties have been listed in the Constitution of India :
    1. To abide by the Constitution and respect its ideals and institutions, the National Flag, National Anthem;
    2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
    3. To uphold and protect the sovereignty, unity and integrity of India;
    4. To defend the country and render national service when called upon to do;
    5. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women;
    6. To value and preserve the rich heritage of our composite culture;
    7. To protect and improve the natural environments including forests, lakes, rivers and wildlife;
    8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
    9. To safeguard public property and not to use violence; and
    10. To serve towards excellence in all spheres of individual and collective activity.
- Besides, a new duty has been added after the passage of Right to Education Act, 2009. "A parent or guardian has to provide opportunities for the education of his child/ward between the age of six and fourteen years.

### 5.1.1 Nature of Fundamental Duties

- These duties are in the nature of a code of conduct. Since they are unenforceable, there is no legal sanction behind them.
- As you will find, a few of these duties are vague. For example, a common citizen may not understand what is meant by 'composite culture', 'rich heritage', 'humanism', or 'excellence in all spheres of individual and collective activities'.
- They will realize the importance of these duties only when these terms are simplified.
- A demand has been made from time to time to revise the present list, simplify their language and make them more realistic and meaningful and add some urgently required more realistic duties.
- As far as possible, they should be made enforceable.

### 5.1.2 The Relationship between the Fundamental Rights, Directive Principles and Fundamental Duties

- Directive Principles have been used to uphold the Constitutional validity of legislation in case of conflict with Fundamental Rights.
- According to the amendment of 1971, any law that even though it deviates from the Fundamental Rights, but has been made to give effect to the Directive Principles in Article 39(b)(c) would not be deemed invalid.
- The Fundamental Duties will be held obligatory for all citizens subject to the State enforcing the same by means of a valid law.

### 5.1.3 Legal Status

- Fundamental Rights guaranteed under Part III of the Constitution are important natural rights necessary for development of human beings. They are enforceable through court of law. No law can be made which takes away or abridges any fundamental rights. On the other hand, Fundamental Duties though not enforceable, but always taken into account while interpreting any fundamental rights.

### Review Questions

1. List any four Fundamental Rights which are Human Rights also.
2. If you are to take a pledge to abide by four Fundamental Duties on the Independence Day, which four duties, according to you are the most important ones and why?
3. Are Fundamental Duties enforceable?
4. How many Fundamental Duties are incorporated in the Indian Constitution?

# 6

## Directive Principles of State Policy

### *Syllabus*

*The Directive Principles of State Policy - Its importance and implementation.*

### *Contents*

- 6.1 *Directive Principles of State Policy*
- 6.2 *Classification of Directive Principles of State Policy (DPSP)*
- 6.3 *Features of Directive Principles of State Policy*
- 6.4 *New Provisions of Directive Principles after Amendment*
- 6.5 *Short Answered Questions*
- 6.6 *Multiple Choice Questions*

## 6.1 Directive Principles of State Policy

- The Directive Principles of State Policy (DPSP) is a guideline in the Constitution of India to the State.
- Directive Principles are mentioned in Part IV from Article 36 to Article 51 of the Indian Constitution.
- The Directive Principles of State Policy (DPSP) is a new directive was added by Forty Second Amendment. It speaks about the duty of the state to protect and improve the environment and to safeguard the forests and wild life of the country.
- These principles lay down that the State shall strive to promote welfare of people by securing and protecting as effectively as it may a social order in which justice - social, economic and political, shall inform all institutions of national life.
- These principles are differing from fundamental. While fundamental rights are enforceable; Directive Principles are not enforceable by the courts.
- The courts cannot compel the government to follow these principles. But it is the duty of every responsible government to translate these principles in to action to promote social and economic justice among citizens. These principles are fundamental in the governance of the country.
- The main aim of these principles is to create social and economic conditions under which all the citizens can lead a good life. In other words it is to establish social and economic democracy in the country.
- The Directive Principles of State Policy may be classified under several groups, covering socio-economic rights to statements of international policy of the country. Significantly, these principles are not justiciable in character.
- They cannot be enforced by the courts of law if the State does not follow these principles in matters of administration as well as in making of laws. But it is the duty of the State to follow them to promote fraternity and equality and to guarantee justice to the people of the country.

## 6.2 Classification of Directive Principles of State Policy (DPSP)

- The Constitution of India does not formally classify the Directive Principles of State Policy but for better understanding and on the basis of content and direction- they can be classified into three categories :
  1. Socialistic Principles,
  2. Gandhian Principles, and
  3. Liberal-Intellectual Principles

## 1. Socialistic Principles

- There are certain principles that are very important for realizing the goals of social and economic democracy in India.
- These principles contemplate the ideology of socialism and lay down the framework of a democratic socialist state. The concept envisages providing social and economic justice, so that state should achieve the optimum norms of welfare state. They direct the state through - Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.
- The following principles, in particular, are aimed at ensuring economic and social equality-
  1. The state should ensure for its people adequate means of livelihood.
  2. The state should ensure fair distribution of the material resources of the country for the common good.
  3. The state should distribute the wealth in such a way that the wealth is not concentrated in a few hands.
  4. There should be equal pay for equal work for both men and women.
  5. The state is directed to take steps to impart compulsory and free education to the children up to the age of 14 years.
  6. The state should try to secure participation of workers in the management of the factory.
  7. Childhood and Youth should be protected against exploitation. Men, women and children should not be forced by economic necessity to enter jobs and vocations not suited to their age or strength.
  8. The state should ensure to the people (a) The right to work (b) The right to education (c) The right to state assistance in cases of unemployment, old age, sickness and disablement.
  9. The state should make provisions for securing just and humane conditions of work for the workers and maternity relief for women.

## 2. Gandhian Principles

- There are certain principles, based on the ideals advocated by Mahatma Gandhi. These Principles are as follows :
  1. To organize village Panchayats.
  2. To promote cottage industries in rural areas.
  3. To prohibit intoxicating drinks and drugs that are injurious to health.
  4. To preserve and improve the breeds of the cattle and prohibit slaughter of cows, calves and other milch and draught animals.

- These principles reflect the programme of reconstruction enunciated by Gandhi during the national movement. In order to fulfil the dreams of Gandhi, some of his ideas were included in DPSP and they direct the state through - **Article 40, Article 43, Article 43 B, Article 46, Article 47 and Article 48.**

### 3. Liberal-Intellectual Principles/ Principles related to International Peace and Security

- The Constitution makers included some principles which provide guidelines to our foreign policy.
- India should render active cooperation for world peace and security and for that the state shall endeavour to :
  1. promote international peace and security.
  2. maintain just and honourable relations between nations.
  3. foster respect for international laws and treaty obligations.
  4. encourage settlements of international disputes by mutual agreement
- These principles inclined towards the ideology of liberalism and they direct the state through- **Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50 and Article 51.**

### 4. Miscellaneous Principles

- There are some notable Directive Principles which do not come under any of the above mentioned categories.
- These are as follows :
  1. The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.
  2. The state shall take steps for the maintenance and protection of the historical monuments, places or objects of national importance
  3. The state shall aim at establishing a uniform civil code for all citizens throughout the country.
  4. The state shall take steps to separate the Judiciary from Executive.

## 6.3 Features of Directive Principles of State Policy

- The Directive Principles of State Policy incorporated under Chapter-IV from Article 36-Article 51 possess the following features :
  1. Directive Principles of State Policy are some instructions to the State for achieving socio-economic development.
  2. Directive Principles of State Policy are not enforceable in the courts and no one can go near the court for its proper implementation.

3. Directive Principles of State Policy are positive in nature . These principles increase power and functions of the State.
4. Directive Principles of State Policy aims at establishment of a welfare state by securing social and economic justice. These principles are based on socialist thinking.
5. These principles are indispensable for socio-economic development of our country. Because welfare and justice are the twin objectives of our Constitution.
6. These principles have great moral value also. It constitutes the conscience of our Constitution. No responsible govt. can dare to go against these principles.
7. Directive Principles of State Policy constitute the mirror of public opinion. These principles always reflect the will of the people. These are embodied in the Constitution to the meet the aspirations of the people.
8. These are fundamental in the governance of the country. The State should follow these principles for progress of the country.

#### **6.4 New Provisions of Directive Principles after Amendment**

- Four new Directive Principles were added in the **42<sup>nd</sup> Amendment Act of 1976** to the original list. They are requiring the state :
  1. **Added clause in Article 39** : To secure opportunities for healthy development of children
  2. **Added clause in Article 39 as Article 39A** : To promote equal justice and to provide free legal aid to the poor
  3. **Added clause in Article 43 as Article 43 A** : To take steps to secure the participation of workers in the management of industries
  4. **Added clause in Article 48 as Article 48A** : To protect and improve the environment and to safeguard forests and wildlife
- **The 44<sup>th</sup> Amendment Act of 1978** added one more Directive Principles which requires the state to minimise inequalities in income, status, facilities and opportunities in article 38.
- **The 86<sup>th</sup> Amendment Act of 2002** changed the subject-matter of Article 45 and made elementary education a fundamental right under Article 21 A. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.
- **The 97<sup>th</sup> Amendment Act of 2011** added a new Directive Principle relating to co-operative societies. It envisages that the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).

# 7

## **Federal Structure and Distribution of Legislative and Financial Powers between Union and States**

### ***Syllabus***

*Federal structure and distribution of legislative and financial powers between the Union and the States.*

### ***Contents***

- 7.1 Federal System
- 7.2 Legislative Relations (Article 245-255)
- 7.3 Financial Relations (Article 268-293)
- 7.4 Short Answered Questions
- 7.5 Multiple Choice Questions



## 7.1 Federal System

- The Constitution provides a federal system of government in the country even though it describes India as 'a Union of States'.
- The term implies that firstly, the Indian federation is not the result of an agreement between independent units and secondly, the units of Indian federation cannot leave the federation.
- The federal system of India is governed in terms of the Constitution of India. The country of India is also referred to as the sovereign, secular, democratic, republic and has a parliamentary form of government.
- The nation is basically a union of 29 states and 7 union territories that work according to the Indian Constitution, which was adopted on the 16<sup>th</sup> of November 1949.
- In the Federal System of India, the head of the executive union is the president of the country. The real political as well as social power, however, resides in the hands of the Prime Minister, who in turn heads the Council of Ministers.
- India is a union of states. The constitution of India has divided the legislative, executive and financial powers between the centre and the states, which gives the constitution a federal character whereas judiciary is integrated in a hierarchical structure.
- According to the Federal System of India, it is clearly stated in the Article 74(1) of the Indian Constitution that the Prime Minister and his Council of Ministers will advise and help the President.
- The Council of Members is answerable to the Lok Sabha or the house of people as per the federal system prevailing in India.

### 7.1.1 Features of Federal Government

- The key features of a federal government are as follows :
  - (i) **Two or more levels of Government** : In a federal government there are two or more levels of government at the State, provincial and local levels. As an exception in India we have third level of government i.e., at the local level.
  - (ii) **Constitutional Status** : Federalism provides constitutional guarantees for the existence and authority of each tier of government. The jurisdiction of the respective levels or tiers of government are specified in the constitution.
  - (iii) **Supremacy of the Constitution** : Basic structure of the Constitution is made indestructible by the Judiciary.
  - (iv) **Independent Judiciary** : Independent judiciary is the essence of federal government. Here courts have the power to interpret the constitution and the powers of the different levels of government. The highest court acts as an umpire if a dispute arises between different levels of government in the exercise of their respective powers.

(v) **Financial Autonomy** : In order to ensure financial autonomy federalism provides specified sources of revenue for each level of government. Every level is free in its own way to impose taxes and raise funds through remunerative enterprises.

In this way a 'federal government' has dual objectives i.e., to safeguard and to promote unity of the country by way of mutual trust and agreement to live together.

(vi) **Distribution of Powers** : In federalism different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, taxation and administration.

In the Indian federal set-up the Constitution divides powers between centre and states into three parts, which are mentioned below :

- (1) Legislative Relations (Article 245-255)
- (2) Administrative Relations (Article 256-263)
- (3) Financial Relations (Article 268-293)

## 7.2 Legislative Relations (Article 245-255)

- Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the State.
- Article 245 provides for territorial limits on legislation powers of parliament and states. It says that parliament can make laws for whole or part of territory of India {which includes states, UTs and other territories such as enclaves}; while states can make laws for whole or part of territory of the state. A law made by parliament cannot be held invalid on ground that it has an extra-territorial operation.
- Article 245 (1) states that Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- Article 245 (2) states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
- Article 246 states that the Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I (i.e. Union List) and List III (i.e. Concurrent List) of the Seventh Schedule.
- Article 247 vests the power of establishing additional courts in parliament if needed for matters related to Union List.
- Article 248 states that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

- In the National Interest (Article 249)- If the Rajya Sabha declares by a resolution supported by not less than 2/3 of its members present and voting, that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter enumerated in the State List (Article 249). After such a resolution is passed, Parliament can make laws for the whole or any part of the territory of India. Such a resolution remains in force for a period of 1 year and can be further extended by one year by means of a subsequent resolution.
- Article 250 states that notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.
- Article 251 states Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the Legislatures of States.
- Article 252 states Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.
- Article 253 states Legislation for giving effect to international agreements.
- Article 254 states Inconsistency between laws made by Parliament and laws made by the Legislatures of States.
- Article 255 states requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.

### **7.2.1 Center's Control Over State Legislation**

- The Constitution empowers the centre to exercise control over the state's legislature in following ways :
  1. The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The President enjoys absolute veto over them.
  2. Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the President as imposing restrictions on freedom of trade and commerce.
  3. The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency.

### **7.3 Financial Relations (Article 268-293)**

- The states are greatly dependent on the Center in this sphere as well. Though the constitution provides independent sources of revenue to states (levy taxes on item no's 45-63 of the state list), these are not adequate. Therefore, the states have to depend on the center for subsidies and contributions.

- Financial relations are enumerated in article 268 to 293 in part XII of the constitution. Financial Relation power between the Centre and States in India.
- Aspects under Financial Relations -
  1. Allocation of Taxing Powers
  2. Distribution of Tax Revenues
  3. Distribution of Non-Tax Revenues
  4. Grants-in-Aid to the States
  5. Finance Commission
  6. Protection of the States' Interest
  7. Borrowing by the Centre & State
  8. Inter-Governmental Tax Immunities
  9. Effects of Emergencies
- Article 268 says about duties to be levied by the Union but collected and appropriated by the states. It includes duties on medicinal and toilet preparations, excise on tobacco, corporation tax, customs and import duties, estate duty, terminal taxes on goods and passengers' tax on goods for inter-state trade etc.
- Article 269 says about taxes to be levied and collected by the Union but assigned to the states. It includes duties in respect of succession to property other than agricultural land, estate duty in respect of property other than agricultural land, terminal taxes on goods and passengers carried by rail, sea or air taxes on railway fares and freights, taxes on the sale and purchase of newspapers and advertisements given therein etc.
- Article 270 says about taxes to be levied and collected by the Union and distributed between the Union and the states. It includes tax on income other than agricultural.
- Article 271 states Surcharge on certain taxes and duties for purposes of the Centre -
  - i) Parliament can any time levy surcharges on taxes referred to in Articles 269 and 270
  - ii) States have no share in Surcharges. All proceeds go to Centre
- Article 272 says about the taxes to be levied and collected by the Union and which may be distributed between the Union and the States. It includes many items given in the Union List as railways and post telegraph telephones, wireless, foreign exchange, foreign loans, customs and export duties etc.
- Article 273 - grants-in-aid will be given to the states of Assam, Bihar, Orissa and west Bengal in lieu of export duty on the jute products. The sums of such grants are prescribed by the president

with the consultation of finance commission. The sums will be given to the states for the period of 10 years from the commencement of the constitution.

- Article 275 says about the grant-in-aid given by the Union to the states for implementing its planning programmes as well as for the development of the Scheduled Castes, Scheduled Tribes and other weaker sections of the community. It is provided that the President shall determine special grants to some states like Assam, Bihar, Orissa and West Bengal in lieu of export duty on jute and jute products etc. India became an independent country from British colonial rule on August 15, 1947. There are several provisions which provide us legislature, administration and financial powers to constitution.
- Article 280 provides for Finance Commission (a quasi-judicial body) constituted by the President. Finance Commission make recommendations to the President-
- Distribution of the taxes to be shared between C&S, allocation & respective shares
- The principles which should govern the Grant-in-Aids by Centre to the states
- The measures need to augment Consolidated Fund of the state
- Any other matters referred to it by the President
- Under Article 282, the union or a state may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

# 8

## Parliamentary Form of Government in India

### *Syllabus*

*Parliamentary Form of Government in India - The constitution powers and status of the President of India.*

### *Contents*

- 8.1 *Parliamentary System*
- 8.2 *Merits and Demerits of Parliamentary System*
- 8.3 *Status of President*
- 8.5 *Multiple Choice Questions*

## 8.1 Parliamentary System

- Parliament is the supreme legislative body of a country. Our Parliament comprises of the President and the two Houses-Lok Sabha (House of the People) and Rajya Sabha (Council of States).
- On the basis of the relationship between the legislature and the executive we have two types of governments namely the Parliamentary and the Presidential.
- A parliamentary system of government means that the executive branch of government has the direct or indirect support of the parliament. This support is usually shown by a vote of confidence. The relationship between the executive and the legislature in a parliamentary system is called responsible government.
- India has a parliamentary system of Government.
- Article 74 and Article 75 deal with the parliamentary system at the centre and Articles 163 and 164 deals with the states.
- The parliamentary government is also called as the Cabinet government due to concentration of executive powers in the cabinet.
- Under Article 75 of the Constitution, the Prime Minister is appointed by the President and the other Ministers are appointed by the President on the advice of the Prime Minister. The Council of Ministers including the Prime Minister are collectively responsible to the Lok Sabha.

### Definitions of Parliamentary System

1. A Parliamentary system is democratic form of government in which government is accountable before the legislature.
2. A parliamentary system is the system in which the real state powers are controlled by the cabinet, cabinet is taken from the parliament and cabinet members are individually or collectively responsible before the parliament.

### 8.1.1 Rajya Sabha

- Rajya Sabha is the Upper House of Parliament. It has not more than 250 members. Members of Rajya Sabha are not elected by the people directly but indirectly by the Legislative Assemblies of the various States.
- Every State is allotted a certain number of members. No member of Rajya Sabha can be under 30 years of age.
- There are at present 245 members in Rajya Sabha.

- The Vice-President of India is the ex-officio Chairman of Rajya Sabha. He is elected by the members of an electoral college consisting of members of both Houses of Parliament.
- Rajya Sabha also elects one of its members to be the Deputy Chairman.

### 8.1.2 Loksabha

- The Lok Sabha is called the lower house of the Parliament of India or the house of the people. Each member of a Lok Sabha seat represents a single geographic constituency. Currently, there are 543 constituencies in India although maximum members can be upto 552.

### 8.1.3 Article 74 : Council of Ministers to Aid and Advise President

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice :
- Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.
- The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

### 8.1.4 Article 75 : Other Provisions as to Ministers

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.
- The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent of the total number of members of the House of the People.
- A member of either House of Parliament belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause :
  - 1) For duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.
  - 2) The Ministers shall hold office during the pleasure of the President.
  - 3) The Council of Ministers shall be collectively responsible to the House of the People.
  - 4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.



- 5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.
- 6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

## **8.2 Merits and Demerits of Parliamentary System**

### **8.2.1 Merits of Parliamentary System**

1. **Harmony between Executive and Legislature :** • In a Parliamentary for a government there is close harmony and cooperation between the executive a legislature.
  - As ministers belong to the ruling party or parties enjoying majority sup the legislature, they do not face much difficulty in getting the support and approval of the legislature for the policies and programmes of the government. There is thus less of confrontation between the executive and the legislature.
2. **Responsible and Clean :** • While the Council of Ministers as a whole is responsible to the legislature, the individual ministers are also individually responsible to it for their respective acts of omission and commission.
  - Being conscious of this, they try to remain 'clean'. The opposition, being the watchdog of the government, will expose a corrupt / inefficient government.
3. **People's Government :** • The Parliamentary executive has been acclaimed as the real government of people because the members of the legislature, as representatives of people, draw the attention of the House to the problems of people. Further, during elections, political parties raise various issues of people. The government is significantly influenced by public opinion.
4. **Quick Decision Making :** • Parliamentary form of government has capacity to take quick decisions. As the ruling party enjoys majority support in the legislature, it can take swift decisions to meet any contingency.
5. **Flexible :** • There is a lot of flexibility in the Parliamentary system of government to cope with changing situations and even emergencies. The system, being flexible, can easily adapt itself to any new reality.
  - One Cabinet may be replaced by a new one without much controversy to tackle any serious situation.

6. **Conducive to National Integration :** • While trying to address the concerns of different regions and cultures of the nation, the Parliamentary form of government helps in promoting national integration
7. **Educational Value :** • The policies and programmes of the government as well as various problems of people are discussed on the floor of the legislature through speeches and questions and answers. The ministers, being the members of the legislature, have to respond to the issues raised by the members of the legislature.
  - Further, at the time of elections, several important and critical issues are discussed by different political parties while trying to get the votes of people. All this helps in increasing people's political consciousness and moulding the public opinion. Thus, the Parliamentary form of government has great value from the point of view of people's political education.

### 8.2.2 Demerits of Parliamentary System

1. **Weak Separation of Powers :** • In this system, the principle of separation of powers is violated. As the ministers are the members of the ruling party or coalition, they dominate policy-making though, in principle, policy-making is the domain of the legislature.
2. **Cabinet Dictatorship :** • The Council of Ministers, with the support of the majority in the lower house of the legislature, tends to be authoritarian and irresponsible. Being assured of the support of the majority, it does not care for the feelings and views of opposition.
  - It has also little respect for the legislature as the majority is bound to support the government. Thus, the Cabinet Government is reduced to party government, and parliamentary democracy is turned into Cabinet Dictatorship.
3. **Failure to Take Prompt Decision :** • As the Council of Ministers does not enjoy a fixed tenure, it is not able to adopt any bold, long-term policy. The problem is compounded in a coalition government which is often unstable. The coalition partners tend to fight among themselves. As a result, they fail to adopt any bold policy.
  - In case of coalition government fails to take prompt, bold and effective steps during a crisis or a war. The Prime Minister takes time to persuade his colleagues in the Cabinet to take a decision. Similarly, it is not easy for the government to persuade the legislature to take a prompt decision to manage a crisis. This stands in the way of taking quick decision even in emergency situation.
4. **Partisanship :** • In a Parliamentary system, political parties are guided more by partisan motives than by national or people's interests.

- The ruling party and the opposition see each other as enemies. While the ruling party seldom sees any merit in the criticism the opposition, the opposition often opposes the government for the sake of opposition.
- 5. Government by Amateurs :** • The Parliamentary government lacks competence and effectiveness, because the ministers are mostly amateurs. As the ministers have to be appointed from among the members of the legislature, the scope for appointing talented and competent people as ministers is limited.
- Many times, important considerations in appointing ministers are not skill, competence and talent but caste, religion, community faction and influence in the party.
- 6. Control by Bureaucracy :** • While the Cabinet is powerful, more powerful is the bureaucracy. The ministers, being mostly amateurs, depend upon civil servants for expert advice and guidance.
- The civil servants exercise real powers in the name of minister. They do not come out to the front. They are not accountable to the legislature.
  - It is the ministers who are held responsible for the decisions taken by civil servants in the name of ministers. This leads to irresponsibility and red-tapism.
  - The Parliamentary form of government, no doubt, has certain lacunae. In particular, it is handicapped by immense partisanship, lack of expertise, and difficulty in taking prompt decisions during crises, but its main merit is accountability.
  - The government is responsible to the legislature, particularly to the lower house which is the popular chamber.
  - The Parliamentary government is relatively more democratic than the Presidential government.

### **8.3 Status of President**

- The President is the head of the state of the Republic of India and also the head of the Central Executive.
- The President is the formal head of the executive, legislature and judiciary of India and is also the commander-in-chief of the Indian Armed Forces.
- Although Article 53 of the Constitution of India states that the President can exercise his or her powers directly or by subordinate authority, with few exceptions, all of the executive authority vested in the President are, in practice, exercised by the Council of Ministers (CoM).
- The central executive besides the President comprises of the Council of Ministers headed by the Prime Minister.

- The Constitution formally vests many functions in the President but he has no function to discharge in his discretion or his individual judgment.
- The President cannot exercise personal discretion in discharge of the functions and the powers but is expected to do so on the advice of the Prime Minister and the Council of Ministers. Therefore the Prime Minister and the Council of Ministers is considered to be the real and effective executive.
- The Central Executive exercises very broad and varied functions. It does not only exercise executive functions but also the power to carry out legislative as well as judicial functions.

# 9

## Amendment of the Constitutional Powers and Procedures

### *Syllabus*

*Amendment of the Constitutional Powers and Procedure.*

### *Contents*

- 9.1 *Constitutional Amendment*
- 9.2 *Article 368 - Power of Parliament to Amend the Constitution and Procedure*
- 9.3 *Procedure for Amendment*
- 9.4 *Multiple Choice Questions*

## 9.1 Constitutional Amendment

- Part XX of the Constitution of India has only one article that is Article 368 that deals with the amendment of the Constitution.
- Indian Constitution is neither rigid nor flexible because, under Article 368, the Constitution can be amended by a simple majority or by the special majority and by the majority of not less than  $\frac{2}{3}$  members of each house.
- Indian Constitution is both rigid as well as flexible i.e. it is difficult to amend but practically flexible. As per Article 368 of Indian Constitution, an Amendment can be introduced in either of the houses, later it can be passed by a special majority or by a simple majority. Later if the bill is passed by the majority it will be sent to the President for his assent.
- In 69 years of the Constitution, 103 Amendments are already done. The 42nd Amendment is considered as the mini-Constitution, the terms socialist, secular, integrity was inserted through it. The First Amendment was done in the year 1950, itself.

### 9.1.1 Ways of Constitution Amendment

- The article 368 provides for three types of amendments :
1. **Amendment by simple majority of the parliament :**
    - These bills are passed by both Houses of Parliament by a simple majority of members present and voting.
  2. **Amendment by special majority of the parliament :**
    - The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting.
    - The expression 'total membership' means the total number of members comprising the House irrespective of fact whether there are vacancies or absentees.
    - The provisions which can be amended by this way include :
      - a) Fundamental Rights
      - b) Directive Principles of State Policy
      - c) All other provisions which are not covered by the first and third categories.
  3. **Amendment by special majority of the parliament and the ratification of half of the state legislatures :**

- Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority.
- The provisions which can be amended by this way include :
  - a) Election of the President and its manner.
  - b) Extent of the executive power of the Union and the states.
  - c) Supreme Court and high courts.
  - d) Distribution of legislative powers between the Union and the states.
  - e) Any of the lists in the Seventh Schedule.
  - f) Representation of states in Parliament.
  - g) Power of Parliament to amend the Constitution and its procedure (Article 368 itself).

### 9.2 Article 368 - Power of Parliament to Amend the Constitution and Procedure

- 1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- 2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House present and voting, [it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill :

**Provided** that if such amendment seeks to make any change in -

- a) Article 54, Article 55, Article 73, Article 162 or Article 241, or
  - b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
  - c) Any of the Lists in the Seventh Schedule, or
  - d) The representation of States in Parliament, or
  - e) The provisions of this article, the amendment shall also require to be ratified by the Legislature of not less than one-half of the States by resolution to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.
- 3) Nothing in Article 13 shall apply to any amendment made under this article.
  - 4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55

of the Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.

- 5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

### 9.3 Procedure for Amendment

- The procedure for the amendment of the Constitution as laid down in Article 368 is as follows :
  1. An amendment of the Constitution can be initiated only by the introduction of a bill for the purpose in either House of Parliament and not in the state legislatures.
  2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the president.
  3. The bill must be passed in each House by a special majority, that is, a majority (that is, more than 50 per cent) of the total membership of the House and a majority of two-thirds of the members of the House present and voting.
  4. Each House must pass the bill separately.
  5. In case of a disagreement between the two Houses, there is no provision for holding a joint sitting of the two Houses for the purpose of deliberation and passage of the bill.
  6. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority, that is, a majority of the members of the House present and voting.
  7. After duly passed by both the Houses of Parliament and ratified by the state legislatures, where necessary, the bill is presented to the president for assent.
  8. The president must give his assent to the bill. He can neither withhold his assent to the bill nor return the bill for reconsideration of the Parliament.
  9. After the president's assent, the bill becomes an Act (i.e., a constitutional amendment act) and the Constitution stands amended in accordance with the terms of the Act.



# 10

## Historical Perspectives of the Amendment in India

### *Syllabus*

*The historical perspectives of the constitutional amendments in India.*

### *Contents*

- 10.1 *Important Amendments of the Indian Constitution*
- 10.2 *Multiple Choice Questions*

### 10.1 Important Amendments of the Indian Constitution

- 1) **7th Amendment (1956)** – States Reorganization Act 1956 on the linguistic basis and abolition of Class A, B, C, D states.
- 2) **14th Amendment (1962)** – Pondicherry incorporated into Indian Union after transfer by France.
- 3) **26th Amendment (1971)** – Abolition of Privy Purse paid to the former ruler of states.
- 4) **31st Amendment Act (1973)** – Increased the elective strength of the Lok Sabha from 525 to 545. Under the Act, the upper limit of representatives of the States goes up from 500 to 525 and that of the Union Territories decreases from 25 to 20.
- 5) **36th Amendment (1975)** – Sikkim included as an Indian State
- 6) **42nd Amendment Act (1976) - Fundamental Duties Prescribed**, It is known as “mini-Constitution” or the “Constitution of Indira”. It is due to the Forty-second Amendment to the Indian Constitution that India became a Socialist, Secular and Democratic Republic. Changes were made to almost every part of the Constitution which includes the Preamble too. It was enacted during the period of internal emergency. It was passed by Parliament on November 11, 1976 and received Presidential assent on December 18, 1976.
- 7) **44th Amendment Act (1978)** – Right to Property deleted from the list of fundamental rights.
- 8) **52nd Amendment (1985)** - Defection to another party after election made illegal.
- 9) **55th Amendment Act (1987)** – It grants Statehood to Arunachal Pradesh which consequently became the 24th State of the Indian Union.
- 10) **56th Amendment Act (1987)** – It confers Statehood on Goa and forms a new Union Territory of Daman and Diu. Goa thus became the 25th State of the Indian Republic.
- 11) **57th Amendment Act (1987)** - The Constitution (57th Amendment) Act, 1987 made a special provision for the setting up of the new State of Goa. Consequently Daman and Diu were separated from the former to form a Union Territory.
- 12) **61st Amendment (1989)** - Voting age reduced from 21 to 18
- 13) **73rd Amendment (1993)** – Introduction of Panchayati Raj, the addition of Part IX to the Constitution.
- 14) **74th Amendment (1993)** – Introduction of Nagarpalikas and Municipalities
- 15) **86th Amendment (2002)** – Right to Education (Free and compulsory education to children between 6 and 14 years)
- 16) **100th Amendment (2015)** - The term the Constitution (100th Amendment) Act, 2015 was in news in the fourth week of May 2015 as the President of India Pranab Mukherjee gave his

- assent to the Constitution (119th Amendment) Bill, 2013 that related to the Land Boundary Agreement (LBA) between India and Bangladesh.
- 17) **101st Amendment (2016)** – Introduction of GST, under this amendment, the Goods and Service Tax was introduced in India on July 1, 2017.
- 18) **123rd Amendment (2017)** – Grant of constitutional status to National Commission on Backward Classes
- 19) **124th Amendment (2019)** - The Bill aims to provide reservation in public employment and higher education for economically weaker sections. Economic reservation in jobs and education is proposed to be provided by inserting clause (6) in Articles 15 and 16 of the Constitution.
- 20) **125th Amendment (2019)** - To increase the financial and executive powers of the 10 Autonomous Councils in the Sixth Schedule areas of the northeastern region. The amendment will impact one crore tribal people in Assam, Meghalaya, Tripura and Mizoram.

## 10.2 Multiple Choice Questions

Q.1 Consider the following statements.

- 1) The President dissolves the Lok Sabha on the advice of the union council of ministers.
- 2) Prime Minister hails from the Lok Sabha.
- 3) All the money bills and other financial bills passed by Lok Sabha need a Special Majority.

Select the correct answer from the codes given below.

- |   |   |
|---|---|
| <input type="checkbox"/> A 1 and 2 only | <input type="checkbox"/> B 1 and 3 only     |
| <input type="checkbox"/> C 2 and 3 only | <input type="checkbox"/> D All of the above |

Q.2 The provision of amending the constitutional provision is given in \_\_\_\_\_.

- |   |   |
|---|---|
| <input type="checkbox"/> A part XIX Article 356 | <input type="checkbox"/> B part XX Article 356  |
| <input type="checkbox"/> C part XX Article 368  | <input type="checkbox"/> D part XIX Article 368 |

Q.3 A Constitutional Amendment Bill passed by both Houses of parliament \_\_\_\_\_.

- |  |
|--|
| <input type="checkbox"/> A does not need the assent of the president                                     |
| <input type="checkbox"/> B does need the assent of the president   |
| <input type="checkbox"/> C does not need the assent of the president if passed by ratification of states |
| <input type="checkbox"/> D none of these   |

# 11

## Emergency Provisions : National Emergency, President Rule, Financial Emergency

### *Syllabus*

*Emergency Provisions : National Emergency, President Rule, Financial Emergency.*

### *Contents*

- 11.1 Emergency Provisions
- 11.2 National Emergency – Article 352
- 11.3 State Emergency- Article 356
- 11.4 Financial Emergency – Article 360
- 11.5 Short Answered Questions
- 11.6 Multiple Choice Questions

## 11.1 Emergency Provisions

- The Emergency powers are discussed in Part XVIII of the Constitution, Article 352 to 360. These provisions enable the Central government or the President to deal with abnormal situations effectively.

### 11.1.1 Types of Emergencies

- The President of India has the power to declare three types of emergency, namely,
  1. National Emergency (Article 352, due to war or armed rebellion or external aggression)
  2. State Emergency (Article 356, due to the failure of constitutional machinery)
  3. Financial Emergency (Article 360)

### 11.1.2 Meaning of Emergency

- Emergency is a serious situation or occurrence that happens unexpectedly and demands immediate action.
- Emergency may pose immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions may not be possible and agencies may only be able to offer proper care for the aftermath.
- The state of emergency is a time of crisis, declared by a government, during which normal laws and civil rights (including Freedom of Media) can be suspended. Another important facet of the law in Media Reporting is the limitation due to 'parliamentary privilege' which refers to two significant aspects of the law relating to both Houses of Parliament and of their members and committees - Freedom of Speech and Right of publication of proceedings.

### 11.1.3 History of Emergency in India

- In the history of independent India, there were three periods during which a state of emergency was deemed to have existed :
  1. Between 26 October 1962 to 10 January 1968 during the India-China war — "the security of India" having been declared "threatened by external aggression".
  2. In December 1971, originally proclaimed during the India-Pakistan war, and later extended along with the third proclamation - "the security of India" having been declared "threatened by external aggression".
  3. Between 26 June 1975 to 21 March 1977 under controversial circumstances of political instability under the Indira Gandhi's prime ministership - "the security of India" having

been declared as "threatened by internal disturbances".

#### 11.1.4 Reasons for Incorporating Emergency Provisions

1. To meet any exceptional or threat full situation
2. To protect the sovereignty, unity, integrity and security of the country.
3. It has been incorporated to change the Indian political system from federal to unitary as per the situation & requirements of the country.

#### 11.2 National Emergency – Article 352

- Under Article 352, the President can declare a national emergency if he believes that there is a threat to the security of India or to the security of a part of India.
- The president can declare a national emergency only after receiving a written communication from the Union Cabinet.
- Article 352 (1) says, *"If the President is satisfied that a grave emergency exists whereby the security of India or of any part of territory thereof is threatened, whether by war or external aggression or armed rebellion he may, by proclamation, make declaration to that effect."*
- National emergency is caused by war, external aggression or armed rebellion in the whole of India or a part of its territory.
- The President can declare an emergency even before the actual occurrence of war or external aggression or armed rebellion.
- The President can declare such an emergency only on the basis of a written request by the Council of Ministers headed by the Prime Minister.
- The proclamation of emergency must be approved by both the Houses of the Parliament by more than half of the total members and at least by two-third of the members present and voting.
- If approved the proclamation may continue for a period of six month, and can be extended to an indefinite period unless revoked by the president.
- During the times of emergency the executive, legislative and financial power of every State in India is to be exercised in accordance with the directions given by the Union Government.
- The Union government under Article 250 gets the power to make laws for the whole or any part of the country.
- The six fundamental rights to freedoms under Right to Freedom under Article 19 (except Articles 20 and 21) are automatically suspended. However, the Right to Life and Personal Liberty cannot be suspended.

- During Emergency the Parliament can make laws on the 66 subjects of the State List (which contains subjects on which the state governments can make laws). Also, during emergency all money bills are referred to the Parliament for its approval.
- During the period of Emergency the term of the Lok Sabha can be extended by a period of one year but not more than six months from the date when the emergency has ceased to exist.
- Till now three National Emergencies has been imposed-first in 1962 at time of Chinese aggression, second in 1971 during the Indo-Pak war, and the third in 1975 on the grounds of internal disturbances.

### 11.2.1 Sub-Types of National Emergency

1. It is called External Emergency : If the ground of declaration is due to war or external aggression.
2. It is called Internal Emergency : If the ground of declaration is due to armed rebellion.

### 11.2.2 Effects on Fundamental Rights in National Emergency

- Fundamental rights present under Article 19 of the constitution cease to operate. Parliament/State can make laws which are against Article 19. No remedy is available against any executive action taken during this period.
- Conditions :
  - i) Fundamental rights under Article 19 cease to operate only when the National Emergency is declared on the ground of war or external aggression & not on the ground of armed rebellion.
  - ii) Only those laws can be challenged which are not related to emergency.
  - iii) Executive action taken under only the laws related to emergency is protected.
- President can suspend the right to move to any court for enforcement of Fundamental Rights.
- Fundamental Rights under Article 20 & 21 remains effective even under National Emergency i.e. they can't be taken away. (Note : Article 20 - right to protection in respect of conviction for offences. Article 21 -right to life and personal liberty)

### 11.2.3 Code of Conduct for Press in Emergency-1971

- A Press Consultative Committee appointed by the Government of India during the Emergency of 1971 has formulated a Code of Conduct for the Press in time of Emergency. These are :
  1. Withhold publication of information considered by the appropriate authorities to be detrimental to national interests.

2. Stop dissemination of confidential information collected in the course of professional duties.
3. Withhold republication of information and comment prejudicial to national interests from foreign and internal sources.
4. Avoid loose talk, as this is likely to lead to wild rumours due to the general belief in public that members of the press have access to sources not generally available.

### 11.3 State Emergency- Article 356

- 'President's Rule' or 'Central Rule' (State Emergency) is the term used in India when a state government is dissolved and is placed under the direct rule by the President of India.
- The President can declare emergency in a State if he is satisfied either on the basis of a report from the Governor of that State or otherwise that the State Government cannot be carried on in accordance with the provisions of the constitution.
- This is also known as President's Rule or Constitutional Emergency. The President's Rule can be declared under Article 356 and Article 365 of the constitution.
- President's Rule is enabled by Article 356 of the Constitution of India and it is declared due to failure of constitutional machinery in a state.
- If the President is satisfied, on the basis of the report of the Governor of the concerned state or from other sources, that the governance in a state cannot be carried out according to the provisions in the Constitution, he can declare emergency in the state.
- The state governor can dissolve the house on his own discretion, if there is no clear majority in the house, on the advice of the ruling party or by the central government.
- The governor then dissolves the house, placing it in 'suspended animation' for a period of six months. After six months, if there is no clear majority, then fresh elections are held.
- Such a proclamation should be approved by the Parliament within two months. If approved by the Parliament, the President's Rule continues for six months to a maximum period of three years.
- During state Emergency, the President of India assumes all executive powers and the state governor runs the state administration on behalf of the President.
- The State Legislature remains either suspended or dissolved. When the Lok Sabha is not in session, the President may authorize any expenditure from the consolidated fund of India.
- During the State Emergency the Parliament makes laws on the 66 subjects of the State List. All money bills have to be referred to the Parliament for approval.



- In this situation ministers of state legislature are not allowed to perform action in state. Such an emergency must be approved by the Parliament within a period of six months.
- It is imposed for six months and can last for a maximum period of three years with repeated parliamentary approval every six months.
- If the Emergency needs to be extended for more than three years, it can be done by a constitutional amendment. This type of amendment was carried on in case of Punjab and Jammu and Kashmir.

### 11.3.1 Difference between National Emergency & President's Rule

Sr.No.	National Emergency	President's Rule
1	Declared under Article 352.	Declared under Article 356.
2	During its operation, state executive & state legislature continue to function.	During its operation, state executive is dismissed & state legislature can be either suspended or dissolved.
3	No maximum period for its operation. It just needs to be approved every six months.	Maximum period for its operation is three years.
4	Under this, the relation of centre with all the states undergoes modification.	Under this, the relation of centre & only the state in which President's rule has been proclaimed undergoes modification.
5	Every resolution for its proclamation or continuance must be passed by Parliament with Special Majority.	Every resolution for its proclamation or continuance must be passed by Parliament with Simple Majority.
6	It affects Fundamental rights of the citizens.	It does not affect Fundamental Rights of the citizens.

7	Lok Sabha can pass a resolution for its revocation.	There is no such provision. It can be revoked by the President only on his own.
8	Parliament can make laws on the subjects enumerated in the State List only by itself that is, it cannot delegate the same to any other body or authority.	Parliament can delegate the power to make laws for the state to the President or any other authority specified by him.

### 11.4 Financial Emergency – Article 360

- Article 360 states that if the President is convinced that the economy stability or the credit of India or any part of India is threatened, he may declare Financial Emergency.
- Such an emergency must be approved by the Parliament within two months. It has never been declared in India. Such a situation had arisen once in India, but was avoided by selling off of the gold assets of India.
- For declaring such an emergency both the Houses of the Parliament must approve within two months by a simple majority. Once approved the Financial Emergency continues indefinitely until revoked by the President.
- The President may issue directions for the reduction of salaries and allowances of all or any class of persons serving under the Union or State Government including the Judges of the Supreme Court and High Courts.
- President can direct the state to observe certain principles (economy measures) relating to financial matters for maintaining financial stability in the country.
- All money bills passed by the State legislatures may be reserved by the President for consideration.

#### 11.4.1 Effects of Financial Emergency

1. Centre directs state government to observe cuts in the financial matter as the centre thinks fit.
2. President can also suggest centre areas where financial cuts can be made to save money.
3. Provisions for the state : A) Centre can reduce the salaries of any of the class serving in the state. B) President can ask the governor to reserve all the money/financial bill passed by a state legislature for his assent.

4. Provisions for the centre : A) President can reduce the salaries of any class serving the centre. B) President can reduce the salaries even of the judges of the High Court & Supreme Court.

### 11.5 Short Answered Questions

**Q.1** What is Emergency ?

**Ans. :** Emergency is a serious situation or occurrence that happens unexpectedly and demands immediate action. It may pose immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent a worsening of the situation, although in some situations, solutions may not be possible and agencies may only be able to offer proper care for the aftermath.

**Q.2** Which Part and Articles of the Constitution of India contains Emergency provisions ?

**Ans. :** Articles 352 to 360 Part XVIII of the Constitution of India contains Emergency provisions

**Q.3** What is State of Emergency ?

**Ans :** A state of emergency is a governmental declaration that may suspend certain normal functions of government, may work to alert citizens to change their normal behaviors, or may order government agencies to implement emergency preparedness plans. It can also suspend all civil liberties.

**Q.4** What kind of majority is needed to pass a resolution of National Emergency ?

**Ans. :** It requires special majority. (Note: Special majority means a majority of the total membership of that house & a majority of not less than two-thirds of the members of that house present and voting.

**Q.5** Are there any subtypes in the National Emergency ?

**Ans. :**

1. It is called External Emergency : If the ground of declaration is due to war or external aggression.
2. It is called Internal Emergency : If the ground of declaration is due to armed rebellion.

### 11.6 Multiple Choice Questions

**Q.1** National Emergency was proclaimed in India \_\_\_\_\_.

- A once                       B twice  
 C thrice                       D four times

# 12

## Local Self Government - Constitutional Scheme in India

### *Syllabus*

*Local Self Government - Constitutional Scheme in India.*

### *Contents*

- 12.1 Local Self Government
- 12.2 Constitution (73rd Amendment) Act 1992
- 12.3 Social Auditing
- 12.4 Constitution (74th Amendment) Act, 1992
- 12.5 Short Answered Questions
- 12.6 Multiple Choice Questions

## 12.1 Local Self Government

- Local bodies are institutions of the local self governance, which look after the administration of an area or small community such as villages, towns, or cities. The Local bodies in India are broadly classified into two categories.
- The local bodies constituted for local planning, development and administration in the rural areas are referred as Rural Local Bodies (Panchayats) and the local bodies, which are constituted for local planning, development and administration in the urban areas are referred as Urban Local Bodies (Municipalities).

### 12.1.1 Role of Local Government

- The many roles that the local government is expected to play today include :
  1. A Regulator, namely the administration of various acts and regulations
  2. A Provider, that involves providing urban services efficiently and equitably by managing its accounts effectively and efficiently.
  3. An Agent that takes the schemes of higher levels government to the people. This includes promotion of popular participation
  4. A Welfare Agency, which provides active assistance to higher level governments in the equitable distribution and delivery
  5. An Agent of Development, who strives for improvement in the quality of life through the augmentation of infrastructure

### 12.2 Constitution (73rd Amendment) Act 1992

- The Constitution (73rd Amendment) Act 1992 has initiated the principle of political participation at the grass-root level aimed at balanced economic development and social justice for all.
- The Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992, were landmarks in the history of local self-government in India in the sense that it gave constitutional status to local self-government at the grass-root level and as a result, it became an indispensable part of governance in the country.
- The core features of the Constitution (73rd Amendment) Act, 1992 are as follows :

As per the Constitution (73rd Amendment) Act, 1992, a new part, namely, Part IX The Panchayats' has been inserted in the Constitution of India.
- A new schedule, namely, the Eleventh Schedule to the Constitution has been added containing 29 subjects which have been devolved to the Panchayats by Part IX of the Constitution. These

include agriculture, including agricultural extension, land improvement, implementation of land reforms, land consolidation and soil conservation, minor irrigation, water management and watershed development, animal husbandry, dairying and poultry, fisheries, social forestry and farm forestry, khadi, village and cottage industries, rural housing, drinking water, fuel and fodder, etc.

- Article 243-B of the Constitution mentions panchayats as institutions of self-government constituted under the Constitution for rural areas. Therefore, local government is not a mere agency of the executive branch.

- As an institutions of self-government, panchayats have autonomy in matters of resources, decision making in respect of powers and functions assigned and autonomy in implementing decisions through its own functionaries, for promoting economic development and ensuring social justice.

- The amendment initiates three tiers panchayat structure. It provides that there shall be constituted in every State, panchayats at the village level, intermediate and district levels. However, panchayats at the intermediate level may not be constituted in a State having a population not exceeding 20 lakh.

- Accordingly, a three-tier structure of Panchayati Raj Institutions was put in place. Accordingly, Zilla Parishads, Anchalik Panchayats and Gaon Panchayats in the District, Block and village levels have been constituted respectively.

- It fixed a five year tenure for all panchayats and their office bearers so that regular election is held.

- Article 243-G recognizes panchayat as institutions of self-government with necessary powers and authority in matters of resources in decision making and to implement its decisions through its own functionaries.

- The Amendment provides institutions like Gram Sabha as people's parliament of rural areas. Gram Sabha constitutes the foundation of panchayati raj system. It aims to strengthen the democratic base of the country as it provided constitutional status to Gram Sabha, a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level.

- The Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may by law provide.

- Another important feature is the provision for setting up a State Finance Commission to allocate adequate resources to panchayat bodies.

- The provision of a mandatory District Planning Committee in each district to consolidate the plans prepared by the panchayats and municipalities in the district and prepare a draft of development plan for the district is another feature of the amendment under Article 243-ZD.
- The amendment provides reservation of seats for Scheduled Castes and Scheduled Tribes based on their population.
- One third of the total numbers of seats are reserved for women so that they may represent in participatory development process and in decision making process.
- The amendment introduces effective devolution of powers and functions to Panchayati Raj Institutions so that it could function as institutions of self-government.
- The Act provides mandatory regular elections for PRIs and entrusts responsibility on the State Election Commission to conduct fair and free election.
- The State legislature shall make laws for maintenance of accounts by the panchayats and laws to audit of such accounts.

### 12.2.1 Panchayat

- A Panchayat means an institution (by whatever name called) of self-government constituted under article 243B of the Constitution of India for the rural areas.

#### Panchayat area :

- Panchayat area means the territorial area of a Panchayat;

#### Village :

- A village means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified.

#### Duration of Panchayats :

- Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

### 12.2.2 Gram Sabha

- Gram sabha is truly the bed-rock of panchayati raj.
- Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level; Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide.
- Gram sabha is people's parliament of rural people.
- Every adult who is 18 years and above is a member of the gram sabha.



- It is through gram sabha that a representative is made accountable to the villagers.
- All States have provided that a Sarpanch/Mukhia/Adhyaksha/Pradhan of the gram panchayat will convene a Gram Sabha, consisting of persons registered in the electoral rolls relating to a village comprised within the area of panchayat at the village level at least twice a year.
- The following matters shall be placed before it by the gram panchayat :
  - a) Annual Statement of accounts and audit report
  - b) Report on the administration of the previous year
  - c) Proposals for fresh taxation or for enhancement of existing taxes
  - d) Selection of schemes, beneficiaries and locations

### 12.2.3 Village Level Panchayat

- It is called a Panchayat at the village level. It is a local body working for the good governance of the village.

### 12.2.4 Intermediate Level Panchayat

- An Intermediate level means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purposes of this Part.
- Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

### 12.2.5 District Level Panchayat

- In the district level of the panchayati raj system, there is zilla parishad. It looks after the administration of the rural area of the district and its office is located at the district headquarters.

## 12.3 Social Auditing

- Social auditing emerged as a complementary to the financial auditing.
- Social auditing is the assessment of an organization's non-financial aspects its achievement or failures.
- Social auditing is a mechanism of monitoring and evaluation of a panchayat body.
- Selected issues are audited socially in the meeting of gram sabha and performance of an institution is assessed.

## 12.4 Constitution (74th Amendment) Act, 1992

- The Constitution (74th Amendment) Act, 1992 came into effect in April 1993.



- In order to provide for a common framework for urban local bodies and help to strengthen the functioning of the bodies as effective democratic units of self-government, Parliament enacted the Constitution (74th Amendment) Act, 1992 relating to municipalities in 1992. The Act received the assent of the President on 20 April 1993.
- The Government of India notified 1 June 1993 as the date from which the said Act came into force. A new part IX-A relating to the Municipalities has been incorporated in the Constitution to provide for among other things, constitution of three types of Municipalities, i.e., Nagar Panchayats for areas in transition from a rural area to urban area, Municipal Councils for smaller urban areas and Municipal Corporation for large urban areas, fixed duration of municipalities, appointment of state election commission, appointment of state finance commission and constitution of metropolitan and district planning committees.
- State/UTs have set-up their election Commissions. Elections to municipal bodies have been completed in all States/UTs except Jharkhand and Puducherry.
- The core features of the Constitution (74th Amendment) Act, 1992 are as follows :
- It inserted Part IX A to the Constitution and incorporated 18 subjects under the Twelfth Schedule related to municipality.
- According to Article 243-Q, there shall be constituted in every State, Nagar Panchayats, Municipal Councils and Municipal Corporations and all the seats of the municipality shall be filled by direct election from the territorial constituencies in the municipal area.
- Each municipal area shall be divided into territorial constituencies to be known as wards. The legislature of a State may by law make provision with respect to composition, manner and territorial area of wards committee.
- Seats are reserved for SCs and STs in every municipality and one-third of the total seats are reserved for women.
- Every municipality shall continue for five years from the date appointed for its first meeting. Under the Act, a municipality means an institution of self-government. As an institution of self-government, it can prepare plans and implement them for economic development and social justice.
- The legislature of a State may by law endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provision for the devolution of powers and responsibilities with respect to preparation of plan and its implementation and subjects incorporated in Twelfth Schedule for economic development and social justice. The legislature of a State may by law authorize a municipality to levy collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits.

- The Finance Commission constituted under the 73rd seventy third amendment act shall review the financial position of the municipality. Similarly, the superintendence direction and control of the preparation of electoral rolls for and the conduct of all elections to the municipalities shall be vested in the State Election Commission.

### 12.5 Short Answered Questions

Q.1 As per the Constitution (73rd Amendment) Act, 1992, which new part has been inserted in the Constitution of India ?

Ans. : Part IX

Q.2 The term of office of a panchayat is - (a) Four years (b) Five years (c) Six years

Ans. : 5 years

Q.3 How is the President of a Gaon Panchayat elected ?

Ans. : The President of a gaon panchayat is elected directly by the people of that panchayat area.

Q.4 What are the various forms of municipalities ?

Ans. : Nagar Panchayats, Municipal Councils and Municipal Corporations

Q.5 What is gram sabhs ?

Ans. : Gram sabha is truly the bed-rock of panchayati raj. It is people's parliament of rural people. Every adult who is 18 years and above is a member of the gram sabha .It is through gram sabha that a representative is made accountable to the villagers.

### 12.6 Multiple Choice Questions

Q.1 Under the panchayati Raj system Gram sabha consist of \_\_\_\_\_.

- A Elected executives of a village
- B Persons who is registered in the electoral rolls relating to a village
- C Elected executives of a village and officials nominated by him/Her
- D The village surpanch and the persons nominated by him/Her.

Q.2 The tenure of every Panchayat shall be for five years from the date of \_\_\_\_\_.

- A declaration of the election results
- B its first meeting
- C issue of notification for the conduct of elections of the Panchayat
- D

# 13

## Scheme of Fundamental Right to Equality

### *Syllabus*

*Scheme of the Fundamental Right to Equality.*

### *Contents*

- 13.1 Right to Equality
- 13.2 Equality Rights (Articles 14 - 18)
- 13.3 Multiple Choice Questions

### 13.1 Right to Equality

- Right to equality is embodied in a series of articles from Article 14 to 18 of the Constitution of India. Article 14 contains the principle of rule of law and Articles 15, 16, 17 and 18 contain the application of this principle.
- The Preamble to the Constitution of India provides for equality of status and opportunity. Equality forms part of the basic structure of the Constitution of India.
- Right to equality (Article 14-18) Right to freedom (Article 19-22) Right against exploitation (Article 23-24) Right to freedom of religion (Articles 25-28) Cultural & educational rights (Articles 29-30) Right to Property (Article 31) Right to constitutional remedies (Article 32). Right to Privacy
- But, Right to property was removed from the list of the Fundamental Rights by the 44th Constitution Amendment Act, 1978 and after amendment, it was made legal right under Article 300-A in part-12 of the Constitution.

### 13.2 Equality Rights (Articles 14 - 18)

#### 13.2.1 Article 14 - Equality before Law

- Article 14 of the Constitution of India reads as under: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
- The said Article is clearly in two parts – while it commands the State not to deny to any person 'equality before law', it also commands the State not to deny the 'equal protection of the laws'. Equality before law prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally.
- State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Art. 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- Art. 14 is taken from the concept of equal protection of laws has been taken from the Constitution of USA.
- The concept of the rule of law is a negative concept while the concept of equal protection of laws is a positive concept.
- The concept of equality before the law is equivalent to the second element of the concept of the 'rule of law'. But certain exceptions to it are, the president of India, state governors, Public

servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.

### 13.2.2 Article 15 - Prohibition of Discrimination on the Grounds of Religion, Race, Caste, Sex or Place of Birth

- Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them.
- Under Article 15 (3) and (4), the government can make special provisions for women and children.
- Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

### 13.2.3 Article 16 - Equality of Opportunities in Matters of Public Employment

- Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them.
- This Article also provides the autonomy to the State to grant special provisions for the backward classes, under-represented States, SC and ST for posts under the State.
- Local candidates may also be given preference in certain posts.
- Reservation of posts for people of a certain religion or denomination in a religious or denominational institution will not be deemed illegal.
- Articles 15 and 16 prohibit discriminatory treatment, but not preferential treatment of women, which is a positive measure in their favour. Affirmative action including by way of reservation is enabled by the equality clause in the Constitution.

### 13.2.4 Article 17- Abolition of Untouchability

- Article 17 of the Constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law.
- The Untouchability Offences Act of 1955 (renamed the Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.
- This Article is levelled more against private conduct, than against conduct of the State. The chances of the State promoting or supporting untouchability is rare.

**13.2.5 Article 18 Abolition of Titles**

- Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state. The awards, Bharat Ratna, Padma Vibhuan, Padma Bhushan and Padma Shri, called as The National Awards would not amount to title within the meaning of Article 18(i).

**13.3 Multiple Choice Questions**

- Q.1** Which one of the following is not a fundamental right ?
- A Right against exploitation                       B Right to constitution remedies
- C Right to property                                       D Cultural and educational rights
- Q.2** Who among the following can impose reasonable restrictions on the rights of the Indian citizen ?
- A The Supreme Court                                       B The Parliament
- C The President     D None of the above
- Q.3** Which one of the following Fundamental Rights is guaranteed only to the citizens and not to the foreigners ?
- A Equality before law and equal protection of law
- B Freedom of speech and expression
- C Right to life and personal liberty
- D Right to freedom of religion

**Answers Key for Multiple Choice Questions**

Q.1	C	Q.2	C	Q.3	B
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# 14

## Scheme of Fundamental Right to Certain Freedom under Article 19

### *Syllabus*

*Scheme of the Fundamental Right to certain Freedom under Article 19.*

### *Contents*

- 14.1 Article 19 - Protection of Certain Rights Regarding Freedom of Speech
- 14.2 Freedom Rights (Articles 19 - 22)
- 14.3 Multiple Choice Questions

**14.1 Article 19 - Protection of Certain Rights Regarding Freedom of Speech**

- Article 19 says that all citizens shall have the right to freedom of speech and expression.
- To assemble peacefully and without arms. To form associations or unions.
- To move freely throughout the territory of India. To practice any profession or to carry on any occupation, trade or business.

**14.2 Freedom Rights (Articles 19 - 22)**

- Article 19(1) of the Constitution reads as under:

Protection of certain rights regarding freedom of speech etc.

1) All citizens shall have the right

a) to freedom of speech and expression;

b) to assemble peaceably and without arms;

c) to form associations or unions;

d) to move freely throughout the territory of India;

e) to reside and settle in any part of the territory of India; and

f) omitted

g) to practise any profession, or to carry on any occupation, trade or business “

- Articles 19(2) to 19(6) contain reasonable restrictions on the rights enshrined under Article 19(1).

**14.3 Multiple Choice Questions**

**Q.1** What is not taken from British Constitution in the Constitution of India ?

- A Parliamentary rule
- B Single citizenship
- C Fundamental rights
- D Cabinet system

**Q.2** Which of the following statements is not true ?

- A The Fundamental Rights of Article 19 are suspended automatically during National Emergency declared on the basis of war or external aggression .
- B The Fundamental Rights of Article 19 can not be suspended in the case of National Emergency declared on the basis of armed rebellion.



# 15

## Scope of Right to Life and Personal Liberty under Article 21

### *Syllabus*

*Scope of the Right to Life and Personal Liberty under Article 21.*

### *Contents*

- 15.1 *Scope of Right to Life and Personal Liberty- Article 21*
- 15.2 *Meaning and Concept of 'Right to Life'*
- 15.3 *Multiple Choice Question*

### 15.1 Scope of Right to Life and Personal Liberty- Article 21

- Article 21 ensures every person right to life and personal liberty. Both the terms, life and personal liberty has been given a very expansive and wide amplitude covering a variety of rights. Its deprivation is only possible through the procedure established by law. The expression "life" has been broadly interpreted by the Supreme Court, which has given it, an expansive scope.
- Article 21 "embodies a constitutional value of supreme importance in a democratic society."
- Article 21 of the Constitution reads as under :  
"Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law"
- From the wording of the Article, it is obvious that the language is negative. However, Article 21 confers on every person the fundamental right to life and personal liberty. It is the most fundamental of human rights, and recognizes the sanctity of human life.
- This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.
- Article 21 can only be claimed when a person is deprived of his "life" or "personal liberty" by the "State" as defined in Article 12. Violation of the right by private individuals is not within the preview of Article 21.
- **Article 21** secures two rights :

#### 1) Right to life

#### 2) Right to personal liberty

- The Article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, **Article 40(4)** of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.
- Article 21 applies to natural persons. The right is available to every person, citizen or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) (e).

### 15.2 Meaning and Concept of 'Right to Life'

- 'Everyone has the right to life, liberty and the security of person.' The right to life is undoubtedly the most fundamental of all rights.
- All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right

to life itself to be in some sense primary, since none of the other rights would have any value or utility without it.

- There would have been no Fundamental Rights worth mentioning if Article 21 had been interpreted in its original sense.
- Article 21 of the Constitution of India, 1950 provides that, "No person shall be deprived of his life or personal liberty except according to procedure established by law." 'Life' in
- Article 21 of the Constitution is not merely the physical act of breathing.
- Right to life is fundamental to our very existence without which we cannot live as a human being and includes all those aspects of life, which go to make a man's life meaningful, complete, and worth living.
- 'Life' as mentioned under Article 21 signifies not merely living or the physical act of breathing. It has a much more profound meaning that signifies the :

1. Right to live with human dignity;
2. Right to livelihood;
3. Right to health;
4. Right to pollution free air; and
5. Right to live a quality life.
6. Right to go abroad;
7. Right to privacy;
8. Right against solitary confinement;
9. Right against delayed execution;
10. Right to shelter;
11. Right against custodial death;
12. Right against public hanging; and anything and everything that fulfills the criteria for a dignified life.

### 15.3 Multiple Choice Question

- Q.1 Which of the following is not matched correctly ?
- A Right to Equality : Article 14-18
  - B Rights against exploitation : Article 20-22
  - C Right to Religious Freedom : Article 25-28
  - D Right to Cultural and Education freedom : Article 29-30

### Answer Key for Multiple Choice Question

Q.1

B

